

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

PAUL LOUGH,

Plaintiff,

v.

No. 16-cv-0338 JCH/SMV

BNSF RAILWAY COMPANY,

Defendant.

ORDER TO SHOW CAUSE

THIS MATTER is before the Court sua sponte. Plaintiff's counsel failed to appear at a telephonic Rule 16 Scheduling Conference scheduled for October 26, 2016. This is not the first time they have failed to appear on time or missed a deadline. Therefore, Plaintiff's counsel must show cause why they should not be held in contempt or otherwise sanctioned.

On September 27, 2016, the Court issued its Second Order Amending Initial Scheduling Order, vacating the original telephonic Rule 16 Scheduling Conference and resetting it for October 26, 2016. [Doc. 22]. The Order directed counsel to call Judge Vidmar's "Meet Me" line on October 26, 2016, at 2:00 p.m. MDT. The Notice of Electronic Filing indicates that the Order was delivered to Plaintiff's counsel via eight separate email addresses. Nevertheless, no one appeared on behalf of Plaintiff, and the Scheduling Conference could not proceed.

This most recent failure to appear follows several prior instances in which Plaintiff's counsel ignored filing deadlines and hearings. First, Plaintiff's counsel repeatedly failed to file the parties' Joint Status Report and Provisional Discovery Plan ("JSR"), even after multiple extensions of the deadline. They failed to file the JSR by the original August 10, 2016 deadline

set out in the Initial Scheduling Order [Doc. 12]. Plaintiff's counsel subsequently failed to meet the amended deadline of September 9, 2016, as set out in the Court's Order Resetting Deadlines [Doc. 17]. And, despite assuring the Court several days later, on September 13, 2016, that they would file the JSR promptly, Plaintiff's counsel still failed to do so; instead, two days later, they requested another extension of the deadline. Even with the extension, Plaintiff's counsel again failed to file the JSR by the new October 14, 2016 deadline. After three missed deadlines and multiple extensions of time, Plaintiff's counsel finally filed the JSR on October 19, 2016 [Doc. 23]—more than two months after it originally was due.

Plaintiff's counsel also missed the deadline by which they were required to serve initial disclosures on opposing counsel. Plaintiff's initial disclosures were due by September 16, 2016; Plaintiff's counsel did not file a certificate of service with the Court until October 24, 2016, more than a month later, stating that initial disclosures were served on opposing counsel that same day. [Docs. 24, 25].

Finally, Plaintiff's counsel previously failed to appear before the Court on time at the September 26, 2016, telephonic Status Conference. Plaintiff's counsel dialed in to the proceedings only after being contacted by the Court, several minutes after the hearing was scheduled to commence.

IT IS THEREFORE ORDERED that no later than **Friday, November 4, 2016, by 5:00 p.m. MDT**, Plaintiff's counsel must show cause, in writing, why they should not be held in contempt or otherwise sanctioned for their pattern of disregarding orders from the Court, including hearings, deadlines, and, most recently, failure to appear at the telephonic Rule 16

Scheduling Conference on October 26, 2016, in accordance with the Court's Second Order Amending Initial Scheduling Order [Doc. 22].

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge